Nos. 15,231 and 15,232

IN THE

United States Court of Appeals

For the Ninth Circuit

CITY OF ANCHORAGE, a Municipal Corporation, *Appellant,* vs. CHUGACH ELECTRIC ASSOCIATION, INC., *Appellee.*	No. 15,231
ANCHORAGE INDEPENDENT SCHOOL DISTRICT, *Appellant,* vs. CHUGACH ELECTRIC ASSOCIATION, INC., *Appellee.*	No. 15,232

Appeal from the District Court for the District of Alaska, Third Division.

BRIEF FOR APPELLANTS CITY OF ANCHORAGE AND ANCHORAGE INDEPENDENT SCHOOL DISTRICT.

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BRIEF FOR APPELLANTS CITY OF ANCHORAGE AND ANCHORAGE INDEPENDENT SCHOOL DISTRICT.

I.

JURISDICTION.

Since the identical issue has been raised in both cases and both taxing units appeal from a common

judgment, the briefs of the City of Anchorage and the Anchorage Independent School District have been consolidated.

This is an appeal taken from a final judgment in favor of the Appellee, filed and entered in the District Court for the Territory of Alaska, Third Judicial Division, on the 12th day of June, 1956.

The District Court had jurisdiction in this proceeding by virtue of the provisions of Sections 53-1-1, 53-2-1, 53-2-4, 16-1-126 and 37-3-54, Alaska Compiled Laws, Annotated, 1949, and 48 U.S.C.A., Section 101.

The United States Court of Appeals for the Ninth Circuit has jurisdiction of said appeal by virtue of the provisions of Section 1291 of Title 28 of the United States Code (as amended October 31, 1951, c. 655, Sec. 48, 65 Stat. 726). This appeal is governed by Section 1294 of Title 28 of the United States Code (June 25, 1948, c. 646, 62 Stat. 930, as amended Oct. 31, 1951, 65 Stat. 727).

II.

STATEMENT OF FACT.

CITY OF ANCHORAGE.

The City of Anchorage is a municipal corporation of the first class, organized under and by virtue of the laws of the Territory of Alaska.

Chugach Electric Association, Inc., is a cooperative, organized under and by virtue of the laws of the Ter-

ritory of Alaska for the purpose of furnishing electrical energy to its members.

In 1954, the City assessed and levied property taxes against certain property of the Chugach Electric Association. The property of the Association taxed by the City was situated within the municipal boundaries. The taxes were not paid and became delinquent. The City then undertook to enforce collection of the tax in the usual manner. The laws of the Territory of Alaska provide for collection of delinquent taxes substantially as follows:

A delinquent tax roll is prepared by the municipal clerk, which contains a list of the properties upon which taxes have been levied and remain unpaid. The tax roll includes the name of the owner, if known, and sets forth the amount of the tax against each parcel of property, together with the penalty and interest accruing thereon and the period of delinquency.

The delinquent tax roll is presented to a District Court for the Territory of Alaska, and a hearing is held, after which, the Court, in the usual course, enters judgment and orders the property sold at tax sale (16-1-22, A.C.L.A., 1949).

The City Clerk-Treasurer for Anchorage prepared the delinquent tax roll for 1954, and included in a supplement thereto certain properties of the Chugach Electric Association. These properties include an interest in an electrical generating plant which is located upon the railroad reserve owned by the United States through its agency, the Alaska Railroad (TR-15231

p. 9). The delinquent tax roll and its supplement were presented to the District Court with a petition praying for judgment and for order of sale (District Court No. A-10,396) (TR-15231 pp. 10-14). After a hearing, the District Court entered judgment and ordered sale of the property.

Chugach Electric Association then filed a motion to dismiss the petition and the order of sale affecting its properties. Several separate and distinct objections to the municipal tax were raised by the Association.

Taxes had also been levied by the Anchorage Independent School District on certain Chugach Electric Association properties situate outside the city boundaries. Substantially, the same objections were raised to the taxes levied by the Anchorage Independent School District (TR-15232 pp. 16-17).

The District Court ordered the two cases consolidated for the purpose of determining the motions to dismiss (TR-15231 p. 19).

Arguments were presented to the Court on behalf of the respective parties, and briefs were prepared and submitted. No evidence was heard. The Honorable J. L. McCarrey, Jr., Judge of the District Court for the Territory of Alaska, Third Division, rendered a written opinion.

The judge stated, in his opinion, that the Chugach Electric Association relied upon three specific grounds in support of its motion to dismiss. The bases for the motion, according to the District Judge, were:

1. The cooperative is a governmental instrumentality and therefore is not taxable.

2. Its property is located wholly within the Alaska Railroad Reserve, with title being in the government, and, therefore, is not taxable.

3. The cooperative has been granted specific immunity from tax action by the Territorial Legislature (TR-15231 p. 22).

The District Court chose to decide the motion on one ground only. It found that the Chugach Electric Association had been granted immunity from municipal taxation by statutes of the Territory of Alaska. Accordingly, the petition of the City of Anchorage (TR-15231 pp. 3-6), and the petition of the Anchorage Independent School District (TR-15232 pp. 3-7) were dismissed with prejudice (TR-15231 p. 32).

The City of Anchorage has taken an appeal from the final judgment of dismissal (Court of Appeals No. 15231), and the Anchorage Independent School District has done likewise (Court of Appeals No. 15232).

ANCHORAGE INDEPENDENT SCHOOL DISTRICT.

The Appellant, Anchorage Independent School District, is a public corporation, organized under appropriate laws of the Territory of Alaska, and, in conjunction with the Department of Education of said Territory, maintains a school system in the Anchorage area.

In pursuance of authorized statutory proceedings, the Appellant, on June 24, 1955, filed, in the District Court for the District of Alaska, a petition and delinquent tax roll, seeking an order directing that all properties listed in such roll be sold to satisfy and discharge Appellant's tax liens (TR-15232 pp. 3-7). Included in the roll so filed were Appellee's real properties upon which taxes had been levied but not paid (TR-15232 pp. 8-9). At the hearing upon Appellant's petition, the Court signed an order (TR-15232 pp. 10-13) authorizing Appellant to sell, according to law, all listed properties for delinquent, unpaid real property taxes. By such order, hearing upon Appellee's objections was continued for such further proceedings as the Court might direct (TR-15232 p. 12).

Thereafter, on July 5, 1955, the Appellee filed its motion (TR-15232 pp. 16-17) to consolidate and to dismiss Appellant's petition. All parties having been heard in arguments relating to such motion, the Court, on September 1, 1955, by minute order (TR-15232 p. 19) granted Appellee's request for consolidation of Appellant's petition with the petition of the City of Anchorage (TR-15231 p. 19). Following oral argument and submission of written briefs by the respective parties, the Court, on May 9, 1956, filed its opinion (TR-15232 pp. 20-30), wherein Appellant's application to sell Appellee's property was denied and dismissed with prejudice. On June 12, 1956, formal judgment of Dismissal (TR-15232 pp. 31-32) was entered.

Following such dismissal, Appellant filed its Notice of Appeal (TR-15232 pp. 34-55) on July 9, 1956.

III.

STATEMENT OF POINTS RELIED ON BY CITY OF ANCHORAGE.

The points upon which the Appellant, City of Anchorage, will rely upon appeal are:

1. The District Court erred in dismissing the Supplemental Petition of the City of Anchorage.

2. The District Court erred in assuming that Chugach Electric Association is within the exemption provided under the Alaska Property Tax Act of 1949, as amended by Chapter 22, Session Laws of Alaska, 1953.

3. The District Court erred in finding that the Chugach Electric Association has been granted specific immunity from all municipal taxation by the Territorial Legislature.

4. The District Court erred in finding that the Alaska Property Tax Act of 1949 was a general codification under the taxing laws of the Territory of Alaska.

5. The District Court erred in finding that the Alaska Property Tax Act of 1949 restricted the taxing power of a municipality under other acts or statutes of the Territory of Alaska.

6. The District Court erred in finding that the classification exempting the property of associations operating utilities under arrangements with Rural Electrification Administration was a reasonable one.

STATEMENT OF POINTS RELIED ON BY ANCHORAGE INDEPENDENT SCHOOL DISTRICT.

The points upon which the Appellant, Anchorage Independent School District, will rely, upon appeal, are:

1. The Court erred in ruling that the Alaska Property Tax of one per cent (1%) was not, in fact, and was not intended by the Legislature to be, in addition to the taxes, Appellant, by law, is otherwise authorized to collect.

2. The Court erred in ruling that the exemption provisions of the Alaska Property Tax Act, Chapter 10, Section 6(b), Session Laws of Alaska, 1949, as preserved by the provisions of Chapter 22, Session Laws of Alaska, 1953, are applicable to the taxes levied by Appellant.

3. The Court erred in granting to Appellee judgment of dismissal, for the reason that said judgment is not supported by evidence establishing Appellee's compliance with the provisions of Chapter 33, Session Laws of Alaska, 1953.

4. The Court erred in ruling that Appellee (Chugach Electric Association, Inc.) is exempt from the payment of taxes levied by the Appellant.

5. The Judgment of Dismissal entered by the Court in the above entitled proceedings is contrary to law.

ARGUMENT I.

THE DISTRICT COURT COMMITTED ERROR IN RULING THAT THE ALASKA PROPERTY TAX OF ONE PERCENT WAS NOT IN FACT AND WAS NOT INTENDED TO BE IN ADDITION TO OTHER TAXES WHICH APPELLANTS BY LAW ARE AUTHORIZED TO LEVY AND COLLECT. THE ALASKA PROPERTY TAX ACT WAS NOT INTENDED TO BE A CODIFICATION OF ALL TAXING STATUTES WITHIN THE TERRITORY OF ALASKA.

The District Court for the Third Division, District of Alaska, has found that the Alaska Property Tax Act (Chapter 10, SLA, 1949) accomplished a codification of all the taxing statutes in Alaska into one basic Act. The Court has, therefore, concluded that the tax exemptions contained in the Alaska Property Tax Act apply to all taxing statutes in force within the Territory of Alaska.

In order to adequately present and to illuminate the issues at hand, it is necessary to review the history of the taxing statutes involved. In 1904 the Congress of the United States authorized and provided that municipal corporations of the Territory of Alaska should have certain specific taxing power. This taxing power was conferred by Congress upon the municipalities by the Act of April 28, 1904, 33 Stats. 529. The purpose of the Act was to amend and codify the laws relating to municipal corporations in the District of Alaska. Section 4, Subsection 9, of the Act specifically authorized the following taxing power:

> "Ninth: To assess, levy and collect a general tax for school and municipal purposes, not to exceed two percentum of the assessed valuation, upon all real and personal property, and to de-

clare the same a lien upon such property and to enforce the collection of such lien by foreclosure, levy, distress, and sale; *Provided,* however, that all property belonging to the municipality, all property used exclusively for religious, educational, and charitable purposes, and the household furniture of the head of a family or a householder not exceeding two hundred dollars in value shall be exempt from such tax; *Provided,* further, that the laws exempting certain property from levy and sale on execution shall not apply to said taxes or the collection of the same."

It may be observed that Congress empowered municipalities to tax all real and personal property at two percent of its assessed valuation. The purpose of this taxing power was to obtain revenue for the benefit of schools and the municipalities of Alaska. The following classes of property were exempt from the tax:

1. Municipal property.
2. Property used exclusively for religious, educational and charitable purposes.
3. Household furniture of the head of a family up to $200 in value.

In 1912, Congress enacted an Organic Act for the organization of the Territory of Alaska. This was the Act of August 24, 1912, 37 Stats. 512. Two taxing authorities were contemplated under the Organic Act. The Territory of Alaska was authorized to place a tax of one percent of the assessed valuation on property located within the Territory. The municipalities of the Territory were authorized to place a tax of two

percent of the assessed valuation on property located within the municipal boundaries.

The Organic Act, in substance, empowered the Territory of Alaska to levy a general property tax of one percent on all property within the Territory, while municipalities were authorized to levy an additional two percent tax on all property located within the town boundaries.

The first compilation of the Laws of Alaska was adopted in 1913. Statutory authority providing for the general tax for school and municipal purposes is found in Section 627 of the Compilation of 1913. Section 627, CLA 1913, is identical with Subsection 9 of the Act of 1904.

The general tax for school and municipal purposes was again enacted by the Legislature of Alaska, Chapter 97 of the Session Laws of 1923. The taxing power remained unchanged, and the wording of Chapter 97, SLA 1923, is identical with the original authority as it first appeared in the Act of 1904 (33 Stats. 529) and again in Chapter 627, CLA 1913.

The first amendment in the general tax for school and municipal purposes was enacted by the Legislature of the Territory of Alaska in 1929. Chapter 116, SLA 1929, added a new exemption which excluded monies on deposit from the imposition of the tax.

In 1931 the Legislature of the Territory enacted Chapter 33, SLA 1931, for the purpose of amending the general tax for school and municipal purposes to

provide for a new exemption from the tax of property owned by veterans' organizations and their auxiliaries.

The Laws of Alaska were again compiled in 1933. In the 1933 compilation, the general tax for school and municipal purposes is provided for in Section 2383. The taxing power remained unchanged, however, and the wording of Section 2383 is identical with Chapter 33, SLA 1931.

In 1948, the Congress amended the Organic Act of 1912 by increasing the authorized two percent tax for general school and municipal purposes on property within municipalities to a three percent tax on such property. 48 USCA 44, 62 Stat. 302.

> "No incorporated town or municipality shall levy any tax, for any purpose, in excess of 3 per centum of the assessed valuation of property within the town in any one year."

The Alaska Compiled Laws Annotated were adopted in 1949. Section 16-1-35 (9) of ACLA 1949 contained the taxing power for the general tax for school and municipal purposes. This statute is identical in form and substance to Section 2383 of the 1933 CLA.

The power of school districts to levy and collect local taxes is derived from municipal taxing statutes. Chapter 77, SLA 1935 authorized school districts to prepare a budget to determine the amount of funds necessary to operate for the following year. The school district budget is then presented to the city council for approval. The city council then appropriates

revenue from its general funds to meet its proportionate share of the budget. The school district is then authorized to levy a tax within the remainder of the district at the same rate as is necessary to raise the city's share within the city. The taxes levied by the school district outside of the city contain the same exemptions as are permitted within the city. Chapter 77, SLA 1935 provides as follows:

"Sec. 13. On or before the first day of May of each year the school board shall determine the amount of funds needed for all school purposes for the following school year beginning on the first day of July and ending on June 30, the year following. It shall, at the same time, determine the proportion of the funds to be raised within the city and the proportion of the funds to be raised outside the city based on assessed valuations. It shall then present the budget to the city council for its approval or rejection of the city's share of the budget. The city council shall at its first meeting in May determine the amount it shall set aside for school purposes as its share of the school expenses for the school year and transmit this information to the school board.

The board shall then determine the share to be paid by that portion of the district lying outside the city and levy the rate outside accordingly and this rate shall be the same as is necessary to raise the city's share within the city. The city council shall transmit to the treasurer of the school board on the first day of each quarter of the fiscal school year one-fourth of its share of the budget. The assessor appointed by the school board shall, on or before the first of October of each year collect

one-half of the taxes due from all taxable property outside the city limits but within the district and, on or before the first of March of each year, he shall collect the other half. The penalties for the non-payment of taxes outside the city but within the district shall be the same as is fixed by the city council for the non-payment of taxes within the city and the rates of interest on delinquent taxes shall also be the same. Residents of the Independent School District living outside of the city limits shall be allowed the same exemption of taxes as is permitted within the city.

Section 14. All taxes levied and assessed by the school board under this article shall be a lien upon the property assessed and such lien shall be prior and paramount to all other liens and encumbrances, and may be foreclosed by an appropriate action in any court of competent jurisdiction. The owner of the property assessed shall be personally liable for the amount of taxes assessed against such property; and such taxes, together with penalties and interest, may be collected after the same become due, in a personal action brought in the name of the school district against such owner in any court of competent jurisdiction. Provided: that the school boards in independent school districts in the levy and collection of taxes shall have all of the powers and duties given to the common council of municipal corporations and the laws relative to the levy and collection of taxes in municipal corporations are hereby extended to Independent School Districts.

Further provided: That all provisions in Sections 1331 to 1336, inclusive, Compiled Laws of Alaska, 1933 (Secs. 37-3-61-37-3-66 herein), re-

quiring refunds of Territorial money to cities and incorporated school districts, and establishing procedures therefor, are hereby made applicable to Independent School Districts."

The first attempt by the Territory to exercise its taxing power on property was in 1949. The Legislature of the Territory of Alaska in 1949 enacted the Alaska Property Tax Act (Chapter 10, SLA 1949)* which provided for a property tax of one percent on all property within the Territory of Alaska. The power to impose this tax had been granted to the Territory of Alaska by the Congress in the Organic Act of 1912.

The Alaska Property Tax Act bears a close analysis, since the purpose and effect of this Act is in question. Section 3 of the Alaska Property Tax Act levied a one percent property tax throughout the Territory. The Act, however, provided two different methods for the assessment and collection of the tax. Within the boundaries of a school district of the Territory, the tax was assessed, collected and enforced in the manner prescribed by the existing property tax law of the municipality or district. The amount of the tax collected in this manner was, with certain exceptions, retained by these local taxing units for their own use and benefit. The tax on property located outside of incorporated cities and school districts was assessed and collected in accordance with certain specific provisions included in the Alaska

*For text, see appendix.

property Tax Act. This portion of the tax was for the benefit and use of the Territory. The Act provided for a number of exemptions which are found in Section 6. Part of exemption (b), of Section 6, appears to exempt the property of a public utility district and an association operating utilities under arrangement with the Rural Electrification Association.

The Alaska Property Tax Act proved to be a source of litigation. On at least two occasions, the question of its validity was brought before the Court of Appeals. In the case of *Mullaney v. Hess,* 189 F. (2d) 417 (CA9), the Court of Appeals reversed the judgment of the District Court for the Fourth Division of Alaska, but did not find it necessary at that time to determine the validity of the Act. However, in *Hess v. Mullaney,* 213 F. (2d) 635 (CA9) the validity of the Act was in issue. The Court found that the lack of an over-all method of assessment was a serious defect in the statute but also found that taxpayers, Hess and others, had failed to show anything more than theoretical inequalities in the tax. Accordingly, the Court of Appeals upheld the validity of the Act.

District Judge J. L. McCarrey, in his opinion, analyzed the Alaska Property Tax Act as follows (TR-15231 p. 25):

> "The Alaska Property Tax Act of 1949 (supra) purports to be a general codification of the tax law in the Territory of Alaska and clearly enumerates the exemptions (supra). I do not believe that the word 'codification' can be considered as being used in a 'strained' sense, for, in Section 3, the law states: '* * * there shall be

assessed, collected and paid, *a tax upon all real property and improvements and personal property* in the Territory * * *.' (Emphasis supplied.) Then in Section 4 of the Act is found this language: 'The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city or town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district * * *', and 'All of the tax levied under this Act which is so collected *shall be remitted to such municipalities or school districts as follows:* * * *' (Emphasis supplied.)

Counsel for the petitioners have urged upon the court the theory that the legislature did not intend, by Chapter 10 of the 1949 Session Laws, to limit the general taxing power of the municipalities, school districts, etc. Their arguments fall *under their own weight since it cannot be said that the legislature intended that the 1% authorized by this act would be in addition to that authorized to the municipalities and independent school districts enumerated above.* Thus, the only reasonable interpretation which one can give to the intent of the legislature in passing Chapter 10 of the 1949 Session Laws is that it intended to codify, so to speak, all of the basic taxing laws into one general act, which they named the 'Alaska Property Tax Act,' wherein they granted certain exemptions. To give any other interpretation would result in the property of an association '* * * operating utilities under arrangement with the Rural Electrification Ad-

ministration * * *' being taxed by the Territory of Alaska outside of any municipality, independent school district, incorporated school district or public utility district; yet, at the same time, such an association' could not be taxed within the boundaries of the foregoing taxing entities."

To sum up the statement of the District Court, it appears that Judge McCarrey conceived the purpose of Chapter 10, SLA 1949 (Alaska Property Tax Act) to be a complete codification of all existing taxing statutes. He further stated that it cannot be said that the Legislature intended that the one percent authorized by the Alaska Property Tax Act would be in addition to those taxes authorized municipalities and independent school districts. The import of the Court's reasoning is that the one percent tax levied by the Territory of Alaska must exclude the two percent general taxing power of the municipalities.

These statements are based on a misconception or misunderstanding of the Act. The history of the two taxing powers should distinguish them, one from the other. But if there is any doubt, it should be put to rest by an express provision contained in Section 4(c) of the Alaska Property Tax Act.

"4. * * *

(c) As to cities which are part of an independent school district, the amount of taxes collected shall be turned over to the city treasurer. The city treasurer is hereby authorized and empowered to turn over to the school board such part of the funds collected as may be determined by the city council from time to time necessary

to efficiency carry on school functions in said school district. *Such cities may assess and collect an additional tax on real and personal property situate in the said cities not to exceed the amount allowed by law, which tax shall be assessed and collected at the same time and in the same manner as the tax provided in Section 3 of this Act, which said funds shall be used by said cities for general municipal purposes.*" (Emphasis supplied.)

With all respect to the District Court, it is difficult to justify the conclusion that the Alaska Property Tax Act is intended to be a codification of all the basic taxing laws in the Territory of Alaska. The objections to this conclusion are obvious. The Alaska Property Tax Act was intended to apply throughout the Territory of Alaska in contrast to the taxes which may be levied by the municipalities under 16-1-35 (9) ACLA 1949, which are limited to the property located within the municipal boundaries. The Alaska Property Tax Act, itself, contemplated additional taxes to be assessed and levied for school and municipal purposes, (Chapter 10, Subsection 4(c) SLA 1949).

There is, however, additional proof that the Alaska Property Tax Act was not intended to be a codification of all the taxing statutes, nor was the Act intended to limit the municipal taxing powers. It must be noted that the Alaska Property Tax Act was approved February 21, 1949. The same Legislature that was responsible for the passage of that Act also enacted Chapter 38 of the Session Laws of Alaska for 1949. Chapter 38 was approved on March 14, 1949,

less than a month after the approval of the Alaska Property Tax Act. Chapter 38, SLA 1949, provided for a general tax for school and municipal purposes. It is substantially identical with the taxing power contained in the Act of April 12, 1904, and which has appeared in the 1913 Compilation of the Laws of Alaska, the Session Laws of 1923, 1929, and 1931, the 1933 Compilation of the Laws of Alaska and the 1949 Compilation of the Laws of Alaska. But Chapter 38, SLA 1949 did more than enact the general tax on property for school and municipal purposes. It increased the power of these taxing units by authorizing a new and additional source of revenue by providing that in addition to the property tax of two percent, a consumer sales tax of two percent might be assessed by the municipalities or school districts. It is hardly logical that Chapter 10, SLA 1949, was intended to be a codification of all the basic taxing laws, when the same legislature, within a month, enlarged the taxing power of municipalities and school districts by enacting Chapter 38, SLA 1949.

Finally, the distinction between these taxing powers was noted by the Court of Appeals in *Hess v. Mullaney,* 213 F. 2d 635. The Court, in speaking of these taxing powers, stated at page 638:

> "Thus it will be seen that upon the face of the statute and according to its terms, para. 3 imposes a tax of one per centum or ten mills upon all real and personal property within the Territory and wheresoever situated. By para. 4 such tax upon property within a city, school district, or utility district is to be 'assessed, collected and

> enforced in the manner prescribed by the property tax law of the municipality or district,' and the tax thus collected in the municipality or district is to be retained by such collecting entity subject to certain other provisions not here material that amounts collected by certain school districts and not used for school purposes shall revert to the territorial treasurer."

The Court recognized the distinction between the two taxing powers in the statement appearing at page 641:

> "Long prior to the enactment of Chapter 10 here considered, cities and school districts within the Territory were authorized to and did levy and collect taxes for municipal and school district ordinances. The one per centum tax called for by Chapter 10 and directed by paragraph 4 thereof to be collected in the cities and districts in the manner prescribed by their local tax laws, was a tax apart from and in addition to the regular municipal and district taxes."

The District Judge, in taking the position that the Alaska Property Tax Act was a "general codification of the tax laws in the Territory of Alaska" found it possible to extend the tax exemptions provided for in that Act to other taxing statutes. Thus, the District Court held that the tax exemption provided for in the Alaska Property Tax Act for associations operating utilities under arrangement with the Rural Electrification Administration would also exempt these associations from municipal taxation. The Court reasoned as follows (TR-15231 p. 26):

"It is true that the statutes under which taxes are levied and collected by the municipalities and the school districts here in the Territory of Alaska are not referred to specifically by a cross reference. However, when all of the acts are viewed as a whole and construed together, the legislature's intent is clear.

I am of the opinion that Chapter 10 of the Session Laws of Alaska, 1949, is a legislation passed under the broad, general taxing powers of the sovereignty of the Territory of Alaska, and while I find that the exemption given to associations operating utilities under an arrangement with the R. E. A. is somewhat broad, loose, and a general term not readily or easily defined, I find that this exemption does apply to the movant, Chugach Electric Association, Inc.

* * * * * * *

I find such a classification of the property exempt under the law herein in question to be a reasonable one, and should the municipalities, independent school districts, etc., of the Territory of Alaska be aggrieved by such a law covering this exemption, their recourse is with the legislature."

It is true that the Alaska Property Tax Act provided for certain exemptions. And it is true also that some of the exemptions which appear in the Alaska Property Tax Act are similar to those which appear in the general tax for school and municipal purposes.

The exemptions under the Alaska Property Tax Act are summarized:

a. Property used exclusively for educational, religious or charitable purposes.

b. Property of the United States or the Territory of Alaska or any municipal corporation, independent school district and associations operating utilities under arrangement with the Rural Electrification Administration.

c. Personal property of any person up to $200.

d. Property of veterans' organizations and auxiliaries.

f. New industrial, commercial or business construction up to 3 years.

g. Homesteads from date of entry until one year after the date of patent.

h. An industrial incentive exemption when authorized by the Tax Commissioner.

The District Court evidently found that since this Alaska Property Tax Act was a general codification of all the taxing laws that the exemptions contained within the Alaska Property Tax Act should be read into and made a part of the general tax for school and municipal purposes. This was done admittedly without the aid of a reference to the statutes affected. It is, therefore, assumed that the District Court found the legislative intent to be that the Alaska Property Tax Act was a codification of the taxing statutes in the Territory and that this Act was intended by the legislature to extend the exemptions therein provided into all other taxing statutes of the Territory.

There is nothing in the Alaska Property Tax Act anywhere to indicate that it was to be considered or was intended to be a general taxing statute affecting other taxing powers. It has been pointed out that the contrary appears to be true. It is difficult to perceive how the exemptions contained in the Alaska Property Tax Act can be read into the general tax for school and municipal purposes. The one exemption which makes references at all to exemptions within municipalities is found under Subsection 6(h4). The exemptions granted by the Tax Commissioner of the Territory of Alaska, under the Alaska Property Tax Act, were made applicable within or without municipalities, school districts or public utility districts.

The general tax for schools and municipalities which was passed by the Legislature in 1949 as Chapter 38, SLA 1949, included certain exemptions which were specifically set forth in the Act. Those exemptions in substance are:

1. Property of the municipality or the Territory.
2. Household furniture of the head of the household up to $200.
3. Property used exclusively for religious, educational or charitable purposes.
4. Property of veterans' organizations and auxiliaries.
5. Monies on deposit.

Some of the exemptions of Chapter 38 are identical or substantially identical to some of the exemptions

contained in the Alaska Property Tax Act. And it is likewise clearly apparent that the Alaska Property Tax Act contained certain exemptions which are not found in Chapter 38, SLA 1949. It is questionable, if the Legislature, in fact, intended that the exemptions contained in the Alaska Property Tax Act should be incorporated into the general tax for school and municipal purposes, that the same Legislature would enact a number of identical tax exemptions in both statutes. And it is even more unlikely to reach such a conclusion when Section 6(h4) of the Alaska Property Tax Act is considered. For, in this one instance, the Legislature provided that an exemption from the Alaska Property Tax Act which might be granted by the Tax Commissioner of the Territory was applicable to taxes levied under that Act within the municipality.

The general tax for school and municipal purposes was again passed by the Legislature in 1951, with the identical exemptions which were contained in Chapter 38, SLA 1949. The Legislature, in 1951, however, authorized an increase in the general tax for school and municipal purposes from two percent to three percent in accordance with the authority which had been granted by Congress in 48 USCA 44.

Finally, one remaining point may be mentioned briefly. If the Alaska Property Tax Act was intended to constitute a codification of the taxing laws of Alaska, the repeal of the Act might, in effect, constitute repeal of other taxing statutes. This can hardly have been the intention of the Legislation.

It is submitted that the conclusion reached by the District Judge in his opinion that the Alaska Property Tax Act is a general codification of the taxing statutes of the Territory of Alaska is in error. We contend that, from the examination of the statutes which are involved, there is nothing to indicate that such was a legislative intent, and the statutes, if taken together, must lead to a contrary conclusion.

ARGUMENT II.

THE DISTRICT COURT FOR THE THIRD DIVISION OF THE TERRITORY OF ALASKA COMMITTED ERROR IN FINDING THAT THE CHUGACH ELECTRIC ASSOCIATION HAD BEEN GRANTED AN EXEMPTION FROM ALL SCHOOL AND MUNICIPAL TAXES.

The exemption claimed by the Chugach Electric Association from the general tax for school and municipal purposes cannot be sustained under any existing statute of the Territory of Alaska.

It has been previously pointed out that the claimed exemption by the association from municipal taxation cannot be sustained under Chapter 10, SLA 1949. Certainly Chapter 22, SLA 1953 did not grant such an exemption since Chapter 22 is a repealing Act and with one specific exception, accomplished the repeal of Chapter 10, SLA 1949.

The only other statute which can be put forward as a basis for the claimed exemption is Chapter 33, SLA 1953. This statute is somewhat unique and is set out below:

"CHAPTER 33
AN ACT

(H. B. 43)

Authorizing and empowering Cities, Municipalities, School Districts, Public Utility Districts and other taxing units to classify property for the purpose of taxation and authorizing the granting of exemptions to certain classes of property; making exemptions granted and classifications made under Chapter 10, Session Laws of Alaska, 1949, binding upon such taxing units; and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. All municipalities, cities of the first and second class, incorporated and independent school districts, public utility districts, and all other taxing units of the Territory having power to tax real and personal property, are hereby authorized and empowered to classify property for the purpose of taxation and to grant exemptions therefrom for the periods herein prescribed to certain classes of property as follows:

(a) New industrial, commercial and business construction may be specially classified and exempted during the period of construction and until the plants or buildings are occupied or operated, but in no case shall this exemption exceed three taxable years from the time of commencement of construction. Modifications and repairs to existing structures shall not be considered a new construction under this provision.

(b) All land, buildings, new plants, equipment and installations as are constructed, procured,

purchased or installed by new industrial enterprises are herein defined to manufacture or process products which constitute industry new to the taxing unit wherein it is located, with resultant establishment of new payrolls in such taxing unit; provided that the term 'new industry' or 'new industrial enterprise' as used therein shall mean undertakings for the purpose of manufacturing or processing products not successfully manufactured or processed in the taxing unit and for which plants have not already been constructed and placed in operation in the taxing unit; and provided, further, that the exemptions from taxation granted under this subdivision shall be not more than one-half of the tax otherwise imposed by law and shall continue for not more than 10 taxable years from the date production is commenced.

Section 2. The governing body or taxing body of the city, municipality, school district or other taxing unit concerned shall, if it desires to grant the exemptions or abatements permitted herein, do so by appropriate ordinance or resolution, which ordinance or resolution shall constitute a contract between the city, municipality, school district or taxing unit, and the owner of the property, or his or its assigns, so classified and exempted from taxation in whole or in part under the provisions of this Act.

Section 3. All exemptions granted in whole or in part, and all classifications heretofore made under the provisions of Section 6, Chapter 10, Session Laws of Alaska 1949, shall remain in full force and effect upon the terms and for the periods granted, and shall be binding upon the Territory,

and all cities, municipalities, school districts, public utility districts and other taxing units in which the property which is the subject of classification or exemption is situated, and the exemptions granted or classifications so made shall apply to all taxes levied and assessed by the city, municipality, school district, public utility district or other taxing units where the property is situated, as fully as though they had been granted or made under the provisions of this Act. The purpose and intent of this section is to carry into practical effect all classifications made and exemptions granted under the provisions of Chapter 10, Session Laws of Alaska, 1949.

Section 4. It is declared to be the purpose and intent of this Act to encourage the establishment of new industry and the construction of new buildings and structures in the Territory which bring new payrolls, new settlers and, consequently, new wealth to the Territory, and which will eventually add to the amount of taxable property in Alaska; and it is enacted for the purpose of authorizing classification of property for taxation.

Section 5. All acts and parts of acts in conflict herewith are hereby repealed to the extent of the conflict.

Section 6. An emergency is hereby declared to exist and this Act shall take effect immediately upon its passage and approval.

Approved March 16, 1953."

It may be observed that the Legislature in Section 1 of Chapter 33 authorized and empowered Appellants to classify property for the purpose of taxation and

to grant exemptions for limited periods to certain classes of property. Two special classes of property are identified. A classification is provided for new industrial, commercial or business construction. An exemption may be granted by the taxing unit to this class of property during the construction period, but the exemption may not exceed three years from the date construction is commenced. A second classification is provided as an incentive for the location of new industry within the taxing unit. The land, buildings, new plants, equipment and installation of new industrial enterprises may be granted an exemption by the taxing unit of one-half the tax otherwise imposed for a period not exceeding ten (10) years from the date the new industry enters production.

Both classifications are permissive, not mandatory, upon the local taxing unit and require an enacted ordinance or resolution by the taxing unit.

Section 3 of Chapter 33 refers to those exemptions granted in whole or in part and all classifications previously made under the provisions of Section 6, Chapter 10, SLA 1949. Such exemptions and classifications were to remain in full force and effect upon the terms and for the periods granted and were made binding upon all taxing units within the Territory. In order to understand more readily what is meant here, it is necessary to examine some of the sections of Chapter 10, SLA 1949.

Section 3 of the Alaska Property Tax Act, Chapter 10, SLA 1949, provided for a one percent property tax on all property within the Territory.

Section 4 of the Act provided that the assessment, collection and enforcement of the tax within incorporated cities and towns would be in the manner prescribed by the local property tax law of the municipality. The portion of the tax collected in this manner was allocated to the use of the municipality within which the property was located. It provided also that additional taxes by local taxing units were contemplated.

Section 5 of the Act provided for assessment, collection and enforcement of the tax outside incorporated cities and school districts, and the amount of revenue collected outside the incorporated areas was allocated to the use of the Territory of Alaska. Other sections of the Act provided a method for the collection of this portion of the tax.

Section 6 of the Alaska Property Tax Act provided for the granting of certain exemptions from this territory-wide property tax. The exemptions which were granted fall roughly into two distinct classes. The exemptions contained in subsections (a) through (g) of Section 6 were mandatory and self-executing. The exemption in subsection (h) however, may be distinguished from other exemptions granted under Section 6. This exemption purports to establish an incentive for new industry by means of a tax exemption. The Tax Commissioner was authorized to grant exemptions under the incentive clause of subsection 6(h) of one-half or less of the tax otherwise imposed in order to encourage new industry. The Tax Commissioner was further required to establish and promulgate general

standards and rules for determining the eligibility of applicants for exemption under these industrial incentive provisions. The period of the exemption granted by the Tax Commissioner was not to exceed ten (10) taxable years from the date the new industry entered production, and the amount of the exemption was limited to one-half of the tax otherwise assessed. In order to secure this exemption, it was necessary for a new industry to file its application for the exemption with the Tax Commissioner. It was necessary to negotiate and consumate the exemption prior to the initial commencement of production by the applicant.

One feature of the exemption is particularly important. Exemptions granted by the Tax Commissioner were made applicable within and without local taxing units. No other exemption provided for under Chapter 10 was made specifically applicable within municipalities or other local taxing units. The wording of this subsection 6(h) is suggestive that the Legislature intended exemptions negotiated and granted by the Tax Commissioner to be in the nature of a contract with each individual applicant.

The repealing Act of 1953, which is Chapter 22, SLA 1953, repealed Chapter 10, SLA 1949 with but one exception. Local taxing units were authorized by Section 2(a) of Chapter 22 to continue to collect taxes which had been levied or might be levied during the current fiscal year, under the appropriate provisions of Chapter 10, SLA 1949. Section 2(b) of Chapter 22 protected the exemption granted by the Tax Com-

missioner of the Territory insofar as the residual taxes under Chapter 10, SLA 1949 were concerned. Therefore, upon the repeal of the Alaska Property Tax Act, the tax incentive for new industry was of small significance. For, if the specific property tax itself were repealed, any particular advantage which was given to new industry by way of a special exemption would be lost. And it appears logical that Chapter 33, SLA 1953 would soon follow the repealing Act.

Chapter 33, SLA 1953 is concerned with establishing certain classifications of property for the purpose of authorizing tax exemptions which will, in turn, act as an incentive to attract new industry.

Section 4 of Chapter 33, SLA 1953, in fact, specifically, expresses the purpose and intent of the Act:

> "Section 4. It is declared to be the purpose and intent of this Act to encourage the establishment of new industry and the construction of new buildings and structures in the Territory which bring new payrolls, new settlers and, consequently, new wealth to the Territory, and which will eventually add to the amount of taxable property in Alaska; and it is enacted for the purpose of authorizing classification of property for taxation."

The purpose of Section 3 of the Act, in keeping with the over-all objective of the Act, is to carry into effect those classifications made or exemptions granted by the Tax Commissioner under Chapter 10, SLA 1949. Section 3 may be understood to preserve and extend the exemptions authorized by the Tax Commissioner for the period and to the extent originally granted.

Appellants contend that Chapter 33, SLA 1953 accomplishes nothing more than its stated purpose. The exemption now claimed by the Chugach Electric Association is entirely apart and distinct from those exemptions granted for the purpose of encouraging the location of new industry.

No allegations have been made, and certainly no evidence has been introduced by the association to establish a right to an exemption under Section 2, Chapter 33, SLA 1953. The association has not made an application to the local taxing units for either of the exemptions made permissible by Chapter 33. Nor has the association alleged and proved that it has been granted an exemption by the Tax Commissioner which must be recognized and enforced under the provisions of Section 33, SLA 1953.

It has been suggested that Chapter 33 is somewhat unique. It is also suggested that the Act may incorporate some technical defects. Particular attention is directed to Section 3 of the Act. This Section refers to exemptions granted and classifications made under Chapter 10, SLA 1949. At the time of reference, Chapter 10, SLA 1949 had been repealed entirely, except for the collection of certain residual taxes outstanding. As a general rule, a statute, when adopting a part or all of a certain statute by reference, takes the statute as it appears at the time of reference, but Section 3 does not purport to re-establish Chapter 10, SLA 1949 or any part thereof. Its purpose is to establish certain classifications or exemptions previously

granted under a repealed Act. Reference in a legislative act to a repealed law, as supplementary or explanatory of a new law, has been regarded as an absurdity (50 Am. Jur. 574).

If the purpose and intent of the Legislature, as announced in Chapter 33, SLA 1953, is to be reasonably construed, the Chugach Electric Association must be denied the exemption which it claims. It is apparent that the association is not claiming an exemption for new construction or a new industry but is claiming an exemption for associations operating utilities under arrangements with R.E.A. This exemption was repealed along with the remainder of Chapter 10, SLA 1949. It is not the type or the class of exemption within the expressed meaning of Chapter 33, SLA 1953. Moreover, as a general rule, if the granting of an exemption is in doubt, it must be resolved against the taxpayer. It has been consistently held by the Courts that a claim to a tax exemption must be in words too plain to be mistaken, and it must be founded on language which cannot be otherwise construed. The following authorities are cited in support of the rule:

Memphis & St. L. R. Co. v. Loftin, 105 US 258, 261;

In re Delaware R. R. Tax, 85 US 206, 225;

Southwestern R. R. Co. v. Wright, 116 US 231, 236;

Hoge v. R. R. Co., 99 US 348, 355;

North Missouri R. R. Co. v. Maguire, 87 US 46, 61;

Washington Chapter of American Institute of Banking v. D.C., 203 F(2d) 68, 70;
Treasurer of Puerto Rico v. Corona Brewing Corp., 89 F(2d) 479, 481.

Appellant's position is further strengthened by subsequent action of the 1953 Legislature. It has been observed that the Legislature repealed Chapter 10, SLA 1949 by Chapter 22, SLA 1953, and the interplay of these statutes has been previously discussed. The same Legislature, however, enacted Chapter 121, SLA 1953. This statute provides for the general tax for school and municipal purposes. That portion of the Act which is material here is set forth below:

"CHAPTER 121
AN ACT

(H.B. 33)

To empower city councils to levy a general tax for school and municipal purposes, and to levy sales taxes within their respective municipalities; and amending Subsection Ninth of Section 16-1-35 ACLA 1949, as amended by Chapter 47 Session Laws of Alaska, 1951, and validating sales taxes already collected, and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. That subsection Ninth of Sec. 16-1-35 ACLA 1949 is hereby amended to read as follows:

Ninth: (a) GENERAL TAX FOR SCHOOL AND MUNICPAL PURPOSES. To assess,

levy, and collect a general tax for school and municipal purposes not to exceed 3 per centum of the assessed valuation upon all real and personal property, and to enforce the collection of such lien by foreclosure, distress and sale. Provided, however, that all property belonging to the municipality or the Territory, and the household furniture of the head of the family or a householder, not exceeding Two Hundred Dollars ($200.00) in value, as well as all property used exclusively for religious, educational, charitable purposes and the property of any organization, not organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, or the property of the auxiliary of any such organizations and all monies on deposit, shall be exempt from taxation. The term 'property used for religious purposes,' employed herein, shall be deemed to include the residence of the pastor, priest or minister of such organization, and all other property of the organization not used for business, rent or profit. Provided, further, that if any such religious, educational, or charitable organization or such veterans organization or auxiliary derives any rentals or profits from such property owned by it or them, such property shall not be exempt. Provided, further, that the laws excepting certain property from levy and sale on execution shall not apply to taxes or to the collection of the same, or to any taxes levied by a municipal corporation."

This specific taxing statute carries its own specific exemptions. It is a well-known rule that statutes of

general application must yield to specific statutes covering the same subject matter:

Murphy Oil Co. v. Burnet, 55 F(2d) 17, 25;
Karrell v. U.S., 181 F(2d) 981, 986.

Since Chapter 121, SLA 1953 is a statute expressly conferring a specific taxing power upon municipalities, the specific exemptions contained therein are controlling. It has been noted that Chapter 10, SLA 1949 contained a classification or type of exemption which did not appear in the general tax for school and municipal purposes. That is, no incentive for new industry was provided for in the general tax for school and municipal purposes. Chapter 33, SLA 1953 made it possible for local taxing units to classify and exempt new industry from taxation by enacting the appropriate ordinance or resolution, but the exemption claimed by the Association is not for classification and exemption as new industry. The exemption claimed is of the type or class specifically set forth in Chapter 121 SLA 1953. Since it is not included as an exemption, then it must be taken that the Legislature did not see fit to grant it. The Court was in error in finding that the Appellee was entitled to the exemption claimed. In effect, if the decision of the District Court is upheld, it will be reading into Chapter 121 SLA 1953 a new exemption for associations operating utilities under arrangements with the R.E.A. In every case that a valid exemption has been granted from this specific taxing power, it has been by way of a specific amendment to the statute. Thus, in 1929, the Legislature exempted from the general school and municipal

taxes, monies on deposits, and in 1931, the Legislature of Alaska exempted from the same tax, property owned by veterans' organizations and their auxiliaries. These exclusions were created by specific amendments to the specific taxing power affected.

Furthermore, the claim of exemption, upon which Appellee relies, is not expressly mentioned in Chapter 33 SLA 1953. Inclusion of the alleged exemption can be accomplished only by implication and interpretation, which was the method adopted by the Trial Court in arriving at its decision. Appellants point out that the only exemptions permitted by Chapter 33 are classifications of property for limited duration and upon conditions expressly stated by the Legislature. Chapter 33, therefore, can be construed only to be operative upon the classifications or exemptions, whichever they be referred to, that are expressly enumerated within its sections. Being so formed, the statute thus comes within the rule of statutory construction, which recognizes that when a statute enumerates the objects to which it is applicable, all objects not expressly mentioned in such statute are to be deemed excluded from the statute and cannot, by implication or otherwise, be subjected to its operative provisions.

> *Brotherhood of Railway and Steamship Clerks, Freight Handlers, etc. v. Norfolk Southern Railway Company,* 154 A.L.R. 1385, 143 F (2d) 1015.

Appellants submit that if all the statutes bearing on this matter are examined, the true intent of the

Legislature is understandable. In general, however, the statutes seem to add confusion upon confusion. Therefore, Appellants submit two additional alternate solutions to the problem.

ARGUMENT III.

THE EXEMPTION CLAIMED BY THE CHUGACH ELECTRIC ASSOCIATION, INC., FOUND IN CHAPTER 10, SESSION LAWS OF ALASKA, 1949, APPLIED ONLY TO TAXES LEVIED UNDER THAT ACT AND THE EXEMPTION DOES NOT AFFECT THE TAXING STATUTES UNDER WHICH THE GENERAL TAX FOR SCHOOL AND MUNICIPAL PURPOSES IS LEVIED.

In 1953 the Legislature of the Territory of Alaska repealed the Alaska Property Tax Act. The repealing Act is, itself, unusual and in order to be understood it is necessary to review some rather novel features of Chapter 10, SLA 1949.

In substance the Act provided for a one percent property tax throughout the Territory. It provided that collection of the tax within municipalities and school district would be accomplished by the municipality or school district and that this portion of the tax might be retained by the local unit for its own benefit. At the same time municipalities were authorized a property tax under other specific taxing powers (Chapter 38, SLA 1953). Finally, Chapter 10 included a number of exemptions which were contained in Section 6 of the Act. These exemptions fall into two classes. A number of self-executing exemptions are provided but subsection 6(h) established an industrial incentive exemption. In this instance the exemption is granted by the Tax Commissioner of the Territory

and is limited both in time and extent. The exemptions thus granted, appellants contend, were made specifically applicable to taxes collected under that Act within or without municipalities or other local taxing units, and not to other taxes collectible by local taxing units.

The repealing Act, Chapter 22, SLA 1953, can more readily be understood if the foregoing provisions are kept in mind. Chapter 22 is set out below.

"CHAPTER 22
AN ACT

(H.B. 3)

To repeal the Alaska Property Tax Act, enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949; excepting from repeal certain taxes and tax exemptions; and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in subsection (a) of this section, which have been granted under the provisions of Section 6 (h) of Chapter 10, Session Laws of Alaska 1949.

Section 3. An emergency is hereby declared to exist and this Act shall be in full force and effect for and after the date of its passage and approval."

It is apparent that Chapter 22 contains two distinct sections. Section 1 of the Act simply repealed the Alaska Property Tax Act of 1949. However, Section 2 of the Act is of major importance since this section contained an exception from the general repeal. Under Section 2 (a) any taxes levied and assessed by a municipality, school district, or public utility district under the Alaska Property Tax Act, or which might be levied and assessed during the current fiscal year were expressly excluded from the general repeal. Municipalities were, therefore, authorized to collect and to retain taxes, which had been assessed or which might be assessed, during the current fiscal year under the appropriate sections of the Alaska Property Tax Act. Having secured for the municipalities this revenue, the Legislature likewise undertook to protect those exemptions granted by the Tax Commissioner of the Territory under the industrial incentive clause (Chapter 10, SLA 1949, Section 6(h)). It has been noted that under Subsection 6(h4) of the Alaska Property Tax Act the exemptions granted by the Tax Commissioner under the industrial incentive clause were expressly applicable within or without

municipalities, school districts or public utility districts. These specific exemptions were protected by Section 2(b) of Chapter 22, SLA 1953. Thus, while appellants might have continued to collect a limited amount of tax under the Alaska Property Tax Act, in collecting the tax they were required to observe only those exemptions granted by the Tax Commissioner under the industrial incentive clause of the Alaska Property Tax Act. Other than the limited exception here discussed, Chapter 22, SLA 1953 accomplished the complete repeal of the Alaska Property Tax. Included in the repeal under Chapter 22, SLA 1953 is Section 6(h) of Chapter 10, SLA 1949 which Appellee relies upon to support the exemption claimed.

Apparently, it was possible therefore for municipalities to collect taxes under the Alaska Property Tax Act without observing any other exemptions beyond the one specifically protected.

It might be argued that Section 3 of Chapter 33 was therefore enacted to extend the remaining exemptions which had not been covered under Section 2 of Chapter 22 to the residual tax which might be collected under Chapter 10.

It is clear in any event that Section 3 is concerned only with exemptions then existing and not with the creation of new exemptions.

It seems more in harmony however with the legislative intent that Chapter 22, Section 2 (b) only retained the exemption for new industry insofar as the

residual taxes levied under Chapter 10, SLA 1949 are concerned, and all other exemptions were thereby repealed.

Further, that the concern which the Legislature felt in seeking to encourage new industry to Alaska to assist the development of the country is again reflected in the enactment of Chapter 33, SLA 1953.

ARGUMENT IV.

THE DISTRICT COURT FOR THE THIRD DIVISION, TERRITORY OF ALASKA, COMMITTED ERROR BY DISMISSING THE PETITIONS FILED BY THE CITY OF ANCHORAGE AND THE ANCHORAGE INDEPENDENT SCHOOL DISTRICT IN ORDER TO ENFORCE THE COLLECTION OF LOCAL TAXES.

A motion to dismiss and a motion for summary judgment serve their most useful purpose where from the pleadings and documentary proof available no controverted fact issue remains and only questions of law are to be decided. Even the important and doubtful questions of law will not be decided on a motion to dismiss if a hearing on the merits may serve to clarify the issues. Barron and Holtzoff, Volume 1 at page 605.

It is true that the District Court found no well-founded doubt in this case (TR-15231 pp. 29-30):

> "In conclusion, I find no well-founded doubt in this case. The legislature has granted an exemption to co-operatives operating utilities under 'arrangement' with the R.E.A. As previously discussed, this exemption is not expressed in as clear language as could be desired. However, I find that the legislature did intend such an exemp-

tion and it is obvious that none but co-operatives such as the Chugach Electric Association, Inc., and other co-operatives in a like position as Chugach Electric Association, Inc., could qualify.

The difficulty of the interpretation of the tax problem and the applicability of the expression herein presented to the taxpayer and the courts is a classic example of the ever-increasing and growing need for the legislature to pass legislation creating better taxation laws."

It seems, however, that the District Court even as it denied the existence of doubt implied the contrary to be true. The Court pointed out that the Legislature has granted an exemption to co-operatives operating utilities under arrangements with the R.E.A. Presumably, the Court made a finding that the Chugach Electric Association qualified as an association operating utilities under *"arrangements"* with the R.E.A. Appellants suggest that the meaning of the exemption itself is open to some doubt. There is, at least in the appellants' opinion, considerable doubt about the application of the exemption in question.

The District Court decided the issue solely on one of three separate grounds. The Court recited the other two grounds relied upon in support of the motion were that the co-operative is a government instrumentality and therefore is not taxable; and second, that the co-operative property is located wholly within the Alaska Terminal Reserve with title being in the government and therefore not taxable.

Certainly, whether the Chugach Electric Association is a governmental agency is open to doubt. The

association is organized under the appropriate statutes of the Territory of Alaska, and operates for the purpose of generating and selling electrical energy to its members.

It is not created as a corporation of the United States and therefore must prove that it is engaged in a governmental function. Title 7 USCA 901 et seq. establishes the R.E.A. The powers of the Administration generally are limited to financing co-operatives organized under the state or territorial laws. The R.E.A., like many other government agencies, in its dealings with local entities assumes the status of a mortgagee which under the existing statutes of Alaska is not the owner of legal title to any property subject of the mortgage.

In the case of *Capitol Building & Loan Association, et al., v. Kansas Commission of Labor and Industry, et al.,* 83 P.(2d) 106, 118 A.L.R. 1212, a Kansas non-profit corporation claimed an exemption from certain state taxes by reason of the fact that it had subscribed for stock in a Federal Home Loan Bank organized under Federal law. There the plaintiff advanced the same theories that are here advanced by Appellee. The Court, at page 1217 of the A.L.R. Annotation stated,

> "The term "Federal instrumentality' is not defined in our statutes, but is a common one in the law books. An instrumentality is anything used as a means or agency. . . . Therefore, a Federal instrumentality is a means or agency used by the Federal Government. . . . Thus, in 2 Cooley on

Taxation, (4th Edition) 1300, it is said, 'A corporation cannot escape state taxation merely because it is created by the Federal Government, nor because it was subsidized by it, nor because it is employed by the Federal Government wholly or in part, unless it is really an agency or instrumentality for the exercise of constitutional powers of the United States.'

"It is apparent that not every person who uses his property or derives profit in his dealings with the Government may clothe himself with immunity from taxation on the theory that either he or his property is an instrumentality of the Government within the meaning of the [immunity] rule."

The Court then ordered that judgment should be entered in favor of the defendant Tax Commission. Other cases are cited.

Capitol Building & Loan Association, et al., v. Kansas Commission of Labor and Industry, et al., 83 P.(2d) 106, 118 A.L.R. 1212;

Metcalf & Eddy v. Mitchell, 269 U.S. 514;

Susquehanna Power Co. v. State Tax Commission of Maryland, 283 U.S. 291;

Atlantic Coastline Railroad Co. v. Maxwell, 178 S.E. 592;

Short v. Board of School District, 177 Atl. 480.

Upon the authority of the foregoing cases, there is no merit to the contention of Appellee that it is an instrumentality of the Federal Government. It cannot escape taxation by the Appellants merely because it is, in effect, subsidized by federal loans. Neither

can it claim immunity by reason of the fact that it may be said to be carrying out a purpose recognized by the Federal Government to extend the electrification of rural areas. Appellee is a private corporation, although it is classified as non-profit, and is, under Territorial law and by the provision of its Articles of Incorporation and By-Laws, engaged for the profit of its members. Being so engaged, it actually is not an agency or instrumentality exercising any constitutional powers on behalf of the United States.

And finally, whether the property of Chugach Electric Association located within the city boundaries is exempt from taxation because it is located on the lands of the Alaska Terminal Reserve would seem to be doubtful. It has been held that the Alaska Terminal Reserve is within the boundaries of the City of Anchorage and that the property of a resident within that area could be taxed by the City.

City of Anchorage v. Akers, 100 F. Supp. 2.

The District Court stated that it decided this issue on the following points of law (TR-15231 p. 29):

> "Points of law which I have considered in the determination of this problem are: There is a presumption against the surrender of taxing power (51 Am Jur 526 at p. 529); therefore, the party claiming the exemption has the burden of proof (51 Am Jur 527 at p. 530), and the existence of a well-founded doubt of an exemption is fatal. (Bank of Commerce v. Tennessee, 161 US 134.) It is also a general principle of law that a statute concerning a municipality (City of Miami v. Kayfetz, 30 So. 2d 521; Fisher v. City of Pittsburgh,

112 Atl. 2d 814) and a school district (Madison County v. School District #2, 27 NW 2d 172) must be strictly construed, since they are both governmental subdivisions."

It is suggested that if the District Court had decided the case below on the points of law considered, the result would be contrary to the ultimate conclusion reached by the Court. Appellants contend that if the rules of law expressed are given effect, the decision of the District Court must be reversed.

IV.

CONCLUSION.

Chugach Electrical Association claims an exemption under Chapter 10, SLA 1949 for the benefit of associations operating utilities under arrangement with the R.E.A. It is suggested by the association that this exemption is also intended to apply to local taxing powers. Examination of the Territorial statutes leads to the conclusion that Chapter 10, SLA 1949 was repealed, leaving only residual taxes to be collected. The only exemption recognized by the repealing statute was the exemption which was to benefit and encourage new industry within the Territory. Chapter 33, SLA 1953 authorized local taxing units to classify properties so as to benefit and encourage new industry within their boundaries. The stated purpose and intent of the statute is specifically set forth and is in accord with Appellants' analysis. Municipalities and school districts have been given specific taxing powers.

Those taxing powers contain specific exemptions from the application of the tax. The Court, therefore, committed error in concluding that the Chugach Electric Association was entitled to the exemption which it claimed. The District Court was also in error in finding that no well-founded doubt obtained as to the existence of the claimed exemption.

For the reasons heretofore stated, the judgment of the District Court should be reversed. On remand, this Court should direct the lower Court to allow such further proceedings, upon Appellants' petitions, as are appropriate under the decision to be rendered herein.

Dated, Anchorage, Alaska,
January 10, 1957.

Respectfully submitted,

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City Attorney of the City of Anchorage,
Attorney for Appellant
City of Anchorage.

EDWARD L. ARNELL,
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School District.

(Appendix Follows.)

Appendix.

Appendix

STATUTES CITED IN BRIEF.

"CHAPTER 10

AN ACT

(H.B. 2)

Levying a tax on property in Alaska; providing for collection thereof, and allowing certain exemptions; defining offenses and prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. TITLE. This Act may be cited as the 'Alaska Property Tax Act'.

Section 2. DEFINITIONS. As used in this Act, the following words and terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) The word 'assessor' means an authorized representative of a Board of Assessment and Equalization designated to perform the duties of making assessments in a judicial division.

(b) The word 'board' means a Board of Assessment and Equalization.

(c) The word 'Collector' means the Tax Commissioner or his authorized representative, employee or agent designated by him.

(d) The word 'division' means judicial division as understood and recognized in Alaska.

(e) The word 'improvements' includes all buildings, Structures, fences and additions erected upon or affixed to the land, whether or not the title of the land has been acquired by any particular person.

(f) The word 'include', when used in a definition contained in this Act, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The word 'person' means and includes any individual, trustee, receiver, firm, partnership, joint venture, syndicate, association, corporation, trust, or any other group acting as a unit.

(h) The words 'personalty' or 'personal property' shall mean all machinery, equipment, household goods, and other tangible personal property which is located on or used in connection with particular land, or owned, possessed or used independently of any particular land.

(i) The word 'property' means and includes real property, improvements, and personalty, as herein defined.

(j) The words 'real property' or 'land' mean any estate or interest therein, including permit or licensed rights, and improvements thereon, and shall include all timber on patented lands.

(k) The words 'Tax Commissioner' means the Tax Commissioner of the Territory of Alaska.

(l) The words 'tax lien' embrace liens for penalties, interest and costs as well as for unpaid taxes.

(m) The word 'Territory' means the Territory of Alaska.

Section 3. LEVY OF TAX. For the calendar year of 1949, and each calendar year thereafter there is hereby levied, and there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory at the rate of one per centum of the true and full value thereof. For the purposes of this secton the assessed value of unimproved, unpatented mining claims which are not producing, and non-producing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at $500.00 per each 20 acres or fraction of each such claim, except that if the surface ground of any such claim is used for other than mining purposes and has a separate and independent value for such other purposes, the valuation as pertains to such non-mining uses and of improvements incidental to such uses shall be according to the full and true value thereof.

Section 4. TAX UPON PROPERTY WITHIN INCORPORATED CITIES AND DISTRICTS. The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city or town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district, by and at the expense of the municipalities and districts prorated proportionately between each, provided that

amounts levied but which prove uncollectible, and the cost of foreclosure on delinquent accounts shall be borne by the city or school and public utility district.

All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts as follows:

(a) As to cities which are not a part of an independent school district the municipal tax collection authority shall turn the amount of tax collected over to the city treasurer.

(b) As to incorporated school districts the tax collectors thereof shall turn the amount of tax collected over to the district school board.

(c) As to cities which are part of an independent school district the amount of taxes collected shall be turned over to the city treasurer. The city treasurer is hereby authorized and empowered to turn over to the school board such part of the funds collected as may be determined by the city council from time to time necessary to efficiently carry on school functions in said school district. Such cities may assess and collect an additional tax on real and personal property situate in the said cities not to exceed the amount allowed by law, which tax shall be assessed and collected at the same time and in the same manner as the tax provided in Section 3 of this Act, which said funds shall be used by said cities for general municipal purposes. Regarding that part of independent school districts outside of town bounds, the tax collection authority therein shall turn the taxes collected over to the dis-

trict school board; provided that the millage levy for school purposes shall be uniform within incorporated school districts whether said district includes another incorporated municipality or not and any unused remainder up to the maximum levy hereunder shall revert to the Territorial Treasurer except that portion collected within any incorporated municipality within the boundary of such school district in which case such remainder, unused for school purposes, shall revert to the treasury of the incorporated municipality in which it may be collected.

(d) Taxes collected hereunder within a public utility district shall be handled in a like manner to those collected in cities or other incorporated municipalities, including collection costs, remissions and school millage levy provisions as set forth herein.

(e) In all cases where such local units are to receive such tax collections, the local tax collection authority shall, upon delivery of the money as above set forth, obtain a receipt in duplicate therefor and forward the duplicate thereof to the Tax Commissioner. The time or times to be set for payment on account of such collections shall be prescribed by the Tax Commissioner. Such other accounting as may be indicated shall be made to the Tax Commissioner at such times and in such manner as may be prescribed by him.

The tax money so collected which remains after remissions have been made shall be transmitted to the Tax Commissioner at such intervals and in such man-

ner as he shall direct, for deposit with the Treasurer, to be covered into the general fund of the Territory.

Section 5. TAX ON PROPERTY OUTSIDE INCORPORATED CITIES AND SCHOOL DISTRICTS. The tax levied under the provisions of Section 3 upon property outside the limits of an incorporated city, independent school district, or incorporated school district or public utility district in the Territory shall be assessed, collected and enforced as provided in this Act.

Section 6. EXEMPTIONS.

(a) Property shall be exempt from taxation hereunder when used exclusively for educational, religious, or charitable purposes.

(b) The property of the United States, of the Territory, and of any municipal corporation, independent school district, incorporated school district, public utility district and association operating utilities under arrangement with the Rural Electrification Administration, shall be exempt hereunder.

(c) The personal property of any person to the value of $200.00 shall be exempt hereunder.

(d) The property of any organization not organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, or the property of the auxiliary of any such organization, and all monies on deposit belonging to such organization shall be exempt hereunder, except any such property which produces rentals or profits for such organization.

(e) The laws exempting certain property from levy and sale on execution shall not apply to taxes levied hereunder or to the collection thereof.

(f) New industrial, commercial and business construction shall be exempt during the period of construction and until the plants or buildings are occupied or operated, but in no case shall this exemption exceed three taxable years from the time of beginning of construction. Modifications and repairs to existing structures shall not be considered new construction under this provision.

(g) All homesteads upon which entry has been made in accordance with the land laws of the United States shall be exempt from the date of entry until one year after the date upon which patent shall have been granted and final title acquired. Such exemptions shall include all improvements upon such homesteads pertaining to residential or agricultural purposes.

(h) INDUSTRIAL INCENTIVE CLAUSE. The Tax Commissioner is authorized to grant incentive exemptions hereunder in the manner and to the extent hereinafter set forth:

(1) An exemption of one-half of the tax otherwise imposed hereunder, or such other lesser fraction thereof as the Tax Commissioner may deem to be a necessary and proper encouragement to new industry as hereinafter defined, for such period not exceeding 10 taxable years from the date production is commenced, upon new plants and buildings and other installations, real estate and equipment, as are con-

structed and procured by new industrial enterprises, as hereinafter defined, to manufacture or process products which constitute industry new to Alaska with resultant establishment of new payrolls in Alaska.

The terms 'new industry' or 'new industrial enterprises' as used herein shall mean undertakings for the purpose of manufacturing or processing products not manufactured or processed in Alaska on the effective date hereof and for which plants have not already been established in Alaska.

(2) The Tax Commissioner shall establish and promulgate general standards and rules conformable to this Act for determining the eligibility of applicants for exemptions hereunder, and the extent to which exemptions for such applicants respectively are to be granted, including such factors as: permanence of the industry involved; the amount of its capital investment; whether it is a seasonal or continuous operation; whether it will likely be marginal because of distance from principal markets; transportation costs and differential in cost of production in Alaska compared to cost of productions elsewhere; the number of resident Alaskan workmen who will be given employment; and other pertinent factors, related to improving the economy of the Territory of Alaska. He shall also consider in each case the recommendation of the Divisional Board of Assessment of the division in which the new industry is proposed to be established, which recommendation shall be obtained by the applicant in advance of the application and attached thereto. After all such factors are taken into considera-

tion, the decision of the Tax Commissioner shall be rendered, subject, however, to final approval of the Divisional Board of Assessment. If after studying the Tax Commissioner's findings and decisions, the said Board, acting by majority of its members, is unable to agree with said decision, it shall, after reasonable notice to the Tax Commissioner and the affected new industry, hold a hearing and make the decision, which shall be final, except that when such exemption decision expires, the position of the new industry may be re-evaluated and extension granted within the maximum limits allowed hereunder, in the same manner as provided for the granting of the original exemption.

(3) All exemptions granted hereunder shall be negotiated and consummated prior to the initial commencement of production by the applicant.

(4) Exemptions granted by the Tax Commissioner hereunder shall be applicable within or without municipalities, school districts or public utility districts.

Section 7. RETURNS.

(a) On or before the 15th day of July in the year 1949, and on or before the 15th day of March in each year thereafter, every person shall submit in duplicate to the assessor of the judicial division, a return of his property, and of the property held or controlled by him in a representative capacity, in the manner prescribed in this Act, which return shall be based on values existing as of January 1 in the same year.

(b) In every case the person making the return shall state an address to which all notices required

to be given to him under this Act may be mailed or delivered.

(c) The return shall show the nature, quantity, amount and value of the property, the place where the property is situated, and said return shall be in such form as the Tax Commissioner may prescribe, and shall be signed and verified by the person liable, or his or its authorized agent or representative.

Section 8. ADDITIONAL RETURNS. The assessor may, by notice in writing to any person by whom a return has been made require from him a further return containing additional details and more explicit particulars, and upon receipt of the notice, that person shall comply fully with its requirements within thirty days after its receipt by him.

Section 9. POWER TO MAKE EXAMINATIONS.

(a) An assessor shall not be bound to accept as correct the return made by any person, but if he thinks it necessary or expedient, or if he suspects that a person who has not made a return is liable to assessment, he shall make an independent investigation as to the property of that person, and may make his own valuation and assessment of the taxable amount thereof, which will be prima facie good and sufficient for all legal purposes.

(b) For the purpose of such examination, the assessor, personally or by any deputy designated by him, may enter upon any premises and may examine any property thereon, and shall have access to and may

examine all property records involved, and such person shall, upon request, furnish to the assessor or deputy every facility and assistance for the purposes of such examination.

(c) An assessor may in any case examine a person on oath or otherwise, and upon request of the assessor, the person shall attend and submit himself to examination by the assessor.

Section 10. INSPECTION OF RETURN. No return made by any person under this Act shall be open for inspection by any person except officers authorized by law to administer this Act, or upon an official investigation or proceedings in court, and any Territorial employee who violates said restriction by communicating any information obtained under the provisions of this Act, except such information as is required by law to be shown on the assessment rolls, or allows any person not legally entitled thereto to inspect or have access to any return made under the provisions of this Act shall be guilty of a misdemeanor punishable under the penalty clause of this Act, and shall be discharged from his office or employment and be ineligible to hold any public office or employment for the Territory for a period of two years thereafter.

Section 11. VALUATION. Property shall be assessed at its full and true value in money, as of January 1 of the assessment year. In determining the full and true value of property in money, the person making the return, or the assessor, as the case may be, shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation,

nor shall he adopt as a criterion of value the price for which the property would sell at auction, or at a forced sale, either separately or in the aggregate with all of the property in the taxing district, but he shall value the property at such sum as he believes the same to be fairly worth in money at the time of assessment. The true value of property shall be that value at which the property would generally be taken in payment of a just debt from a solvent debtor.

Section 12. ASSESSMENT. Every person shall be assessed and taxed annually on his property in the division in which the property is situated, and where any parcel of land is situated partly in one division and partly in another or partly within a municipality or school district and partly eleswhere, the assessment in respect of that parcel shall be made in the division or district within which the greater part of the property is situated. Real property and personalty shall be separately assessed.

Section 13. TO WHOM ASSESSED.

(a) Subject to subsection (b) and (c) of this section, property shall be assessed and taxed in the name of the owner or claimant or where the property is owned, occupied or claimed by two or more persons, it shall be assessed and taxed in the names of the owners, occupiers or claimants jointly.

(b) Where a verified statement is furnished showing that property has become the subject of a contract of sale or been leased by the owner to another person, the name of the other person shall be noted on the assessment roll and like notice of the assessment

shall be sent to him as to the owner, in which case the taxes assessed in respect of the property may be received, either from the owner or from the purchaser or tenant, or from any optionee, prospective distributee, purchaser or encumbrancer who desires to safeguard the title to the property.

(c) Land of the United States or the Territory which is held under any mining location, lease, license, agreement for sale, accepted application for purchase, or otherwise, shall be assessed and taxed in the name of the occupier according to the value of his interest therein (except as above modified in this Act with respect to certain mining claims); but no assessment or taxation in respect of land so held or occupied shall in any way affect the rights of the United States in the land.

(d) Where the property assessed is owned by two or more persons in undivided shares, each owner shall be assessed on the undivided interest at the proportion of the assessed value of the property that his undivided interest bears to the whole.

Section 14. CONTENT OF ASSESSMENT ROLL.

(a) The assessor of each division shall prepare an annual assessment roll for each division covering property outside of municipalities and school districts and public utility districts, after consideration of all returns made to him pursuant to this Act, and after careful inquiry from such sources as he may deem reliable. On the roll he shall enter the following particulars:

(1) the names and last known addresses of all persons with property liable to assessment and taxation;

(2) a description of all taxable property;

(3) the assessed value, quantity, or amount of said property and the taxes thereon;

(4) the arrears of taxes owing by any persons; and,

(5) any other information that may be required by the Tax Commissioner.

(b) It shall be a sufficient description of any property for the purposes of this Act, if there is entered on the assessment roll the best available short description of the property.

Section 15. ASSESSMENT NOTICE.

(a) The assessor, before completion of the assessment roll, shall give to every person named thereon a notice of assessment, showing the valuation and assessment of his property and the amount of taxes thereon, in such form as the Tax Commissioner may prescribe. At least 60 days must be allowed from date of such mailing within which to appeal to the Board against the assessment. He shall enter on the roll opposite the name of each person the date of giving the assessment notice which entry shall be prima facie evidence of the giving of the notice. On the back of each assessment notice shall be printed a brief summary for the information of the taxpayer, of the dates when the taxes are payable, delinquent, and subject to interest, dates when the Board will sit for equaliza-

tion purposes, and any other particular specified by the Tax Commissioner.

(b) The assessment notice shall be directed to the person to whom it is to be given, and shall be sufficiently given if it is mailed by first class mail addressed to, or is delivered at, his address as last known to the assessor; or, if the address is not known to the assessor, the notice may be mailed addressed to the person at the postoffice nearest to the place where the property is situated. The date on which the notice is so mailed or is so delivered for all purposes of this Act shall be deemed to be the date on which the notice is given.

Section 16. COMPLETION OF ASSESSMENT ROLL. The assessor shall complete the annual assessment roll for the year 1949 on or before the 1st day of September and for each year thereafter on or before the 1st day of July of that year, which shall be based on values of January 1st immediately preceding, and shall certify the same by attaching thereto a certificate in a form to be prescribed by the Tax Commissioner. Such supplementary assessment rolls shall be prepared and certified as may be deemed necessary or expedient.

Section 17. EFFECT OF ASSESSMENT ROLL. All taxes to be levied or collected under this Act shall, except as otherwise provided, be calculated, levied and collected upon the assessment entered in the assessment rolls and certified by the respective assessors as correct, subject to the taxpayers' rights

of appeal and to the corrections and amendments made in the rolls pursuant to this Act.

Section 18. PROVISIONS APPLICABLE TO SUPPLEMENTARY ROLLS. All the duties imposed upon the assessor with respect to the annual assessment roll and all the provisions of this Act relating to assessment rolls shall, so far as applicable, apply to supplementary assessment rolls.

Section 19. CORRECTION OF ERRORS BY ASSESSOR. Any assessor may correct any error, omission or invalidity made or arising in the preparation of the assessment roll at any time before the sitting of the Board. It shall be the duty of every person receiving a notice of assessment to advise the assessor of any error, omission or invalidity he may have observed in the assessment of his property, in order that the assessor may correct the same.

Section 20. TRANSMISSION OF ROLL TO THE TAX COMMISSIONER.

(a) A Copy of all assessment rolls shall be certified and transmitted to the Tax Commissioner at Juneau not later than one month after the completion of same unless the time for transmission is extended by the Tax Commissioner. This shall be in addition to deposit of the assessment roll for retention in the division as required in Section 22.

(b) All corrections and amendments made in the roll pursuant to this Act or the decisions of the Board or the courts, and which are not shown on the assess-

ment roll deposited with the collector or upon the copy transmitted to the Tax Commissioner at Juneau, shall be forthwith reported to the collector by the assessor.

Section 21. VALIDITY OF ASSESSMENT ROLLS. Every assessment roll as completed and certified by the assessor, and as corrected and amended by him from time to time in conformity with this Act and the decisions of the Board shall, except insofar as the same may be further amended on appeal to the court, be valid and binding on all persons, notwithstanding any defect, error, omission or invalidity existing in the assessment roll or any part thereof, and notwithstanding any proceedings pertaining thereto.

Section 22. DEPOSIT OF ROLL WITH COLLECTOR. Upon a completed assessment roll being amended by the assessor in conformity with the decisions of his Board, the assessor shall deliver the roll to the collector, for retention in the division to which it applies, and the roll shall be open during office hours to the inspection of all taxpayers of the division.

Section 23. SITTINGS AND RECORDS OF BOARD. For the purpose of scrutinizing the assessment roll and its supplements, and taking corrective action thereon, or for hearing appeals in respect of any assessment roll, or from any assessment made under this Act, the Board in each division shall sit and adjourn from time to time as its business may require, and shall record its proceedings and decisions. During all periods when a Board is not in session, its records and decisions shall be kept by the assessor.

Section 24. NOTICES BY BOARD.

(a) Where the name of any person is ordered by the Board to be entered on the assessment roll, by way of addition or substitution, for the purpose of assessment the Board shall cause notice thereof to be mailed by the assessor to that person or his agent in like manner as provided in Section 15, giving him at least 60 days from the date of such mailing within which to appeal to the Board against the assessment.

(b) Whenever it appears to the Board that there are overcharges or errors or invalidities in the assessment roll, or in any of the proceedings leading up to or subsequent to the completion of the roll, and there is no appeal before the Board in which the same may be dealt with, the Board may notify parties affected with the view of hearing them.

Section 25. APPEAL BY PERSON ASSESSED.

(a) Any person whose name appears on the assessment roll for any division or who is assessed in any district, may appeal to the Board with respect to any alleged overcharge, error, omission or neglect of the assessor.

(b) Notice of appeal, in writing, shall be filed with the Board within 60 days after the date on which the assessor's notice of assessment was given to the person appealing. Such notice must contain a certification that a true copy thereof was mailed or delivered to the assessor. If notice of appeal is not given within that period, right of appeal shall cease, unless it is shown to the satisfaction of the Board that the taxpayer was unable to appeal within the time so limited.

(c) A copy of the notice of appeal must be sent to the assessor as above indicated.

Section 26. APPEAL RECORD. Upon receipt of the notice of appeal, the assessor shall make a record of the same in such form as the Tax Commissioner may direct, which record shall contain all the information shown on the assessment roll in respect of the subject matter of the appeal, and the assessor shall place the same before the Board from time to time as may be required by the Board.

Section 27. NOTICE OF HEARING. Not less than 30 days before the sittings at which the appeal is to be heard, the Board shall cause a notice to be mailed by the assessor to the person by whom the notice of appeal was given, and to every other person in respect of whom the appeal is taken, to their respective addresses as last known to the assessor. The form of such notice shall be prescribed by the Tax Commissioner.

Section 28. HEARING OF APPEAL.

(a) At the time appointed for the hearing of the appeal, the Board shall hear the appellant, the assessor, other parties to the appeal and their witnesses, and consider the testimony and evidence adduced, and shall determine the matters in question on the merits and render its decision accordingly.

(b) If any party to whom notice was mailed as above set forth fail to appear, the Board may proceed with the hearing in his absence.

(c) The burden of proof in all cases shall be upon the party appealing.

Section 29. ENTRY OF DECISIONS. The Board shall from time to time enter in the appeal record its decisions upon appeals brought before it, and shall certify to the same. The assessor, upon receipt of the appeal record, and subject in every case to any appeal taken to the courts, shall enter in the assessment roll such amendments as may be necessary to give effect to the decisions of the Board.

Section 30. COLLECTION UNAFFECTED BY APPEAL. Neither the giving of a notice of appeal by any taxpayer, nor any delay in the hearing of the appeal by the Board shall in any way affect the due date, the delinquency date, the interest, or any liability for payment provided by this Act in respect of any tax which is the subject matter of the appeal. In the event of the tax being set aside or reduced by the Board on appeal, the Tax Commissioner shall refund to the taxpayer the amount of the tax or excess tax paid by him, and of any interest imposed and paid on any such tax or excess.

Section 31. APPEAL TO COURT. Any person feeling aggrieved by any order of the Board shall have the right of appeal on a de novo basis to the District Court for the Territory of Alaska in the division in which the matter is pending. Such appeal shall be pursued as nearly as may be in accordance with the procedure prescribed in Sections 68-9-4 to 68-9-14 inclusive, Alaska Compiled Laws Annotated 1949, governing appeals from a Justice's Court in civil cases and the Tax Commissioner shall promulgate uniform regulations adapting the above referenced procedure for perfecting such appeals.

Section 32. TIME OF PAYMENT. Taxes for a calendar year shall be payable annually the first day of February of the ensuing year. Failure to pay on said due date shall cause the tax to become delinquent and shall subject the property assessed to the interest and penalty additions hereinafter provided. Payments of taxes may be made at any time before their due date, but no discount shall be allowed for such early payment.

Section 33. MODE OF PAYMENT. All taxes payable under this Act shall be paid in lawful money of the United States or its equivalent, at the office of the collector in the judicial division in which same are due.

Section 34. LIEN.

(a) The taxes assessed upon property, together with interest and penalty, shall be a lien thereon from and after assessment until paid, and no sale or transfer of such property shall in any way affect the lien of such taxes.

(b) Liens for taxes hereunder shall be first liens and paramount to all prior and subsequent encumbrances, alienations and descents of the property.

Section 35. INTEREST.

(a) For failure to pay taxes when due, interest inclusive of penalty at the rate of one percent per month shall be added on the first of each month until the tax is paid or the property sold hereunder, but not to exceed the legal rate of interest in the aggregate.

(b) Where a tax becomes payable in respect to property assessed on a supplementary assessment roll, the like interest shall be added to and recovered as a part of the tax as might have been imposed if the return and the assessment had been made at the time prescribed by this Act and the tax had been duly levied and had not been paid.

Section 36. FAILURE OR REFUSAL TO COMPLY WITH ACT. Every person who, without reasonable excuse, in violation of any provision of this Act or of the regulations made thereunder——

(a) refuses or fails to make any return required to be made; or,

(b) in the making of any return, or otherwise, wilfully withholds any information necessary for ascertaining the true taxable amount of any property; or,

(c) refuses or fails to furnish to the assessor or his employee or agent any access, facility, or assistance required for the purpose of an entry on or examination of property or records; or,

(d) refuses or fails to attend or submit himself to examination on oath or otherwise by the assessor, the Board or the Tax Commissioner when duly cited so to do;—shall, in addition to penalties otherwise prescribed herein, be guilty of an offense against this Act.

Section 37. FALSE RETURNS AND RECORDS. Every person who knowingly and wilfully makes any false or deceptive statement in any return required to be made under this Act, or fraudu-

lently omits to give therein a full and correct statement of the property of the taxpayer, or makes or keeps any false entry or record in any book of account or record required to be kept under this Act, shall be liable, on conviction, to a fine of not less than One Hundred Dollars and not more than One Thousand Dollars.

Section 38. DEFACING POSTED NOTICES. Every person who, without reasonable excuse, tears down, injures or defaces any advertisement, notice or document which, under the authority of this Act or the regulations made thereunder, is posted in a public place, shall be guilty of an offense against this Act.

Section 39. PENALTY FOR OFFENSES. Every person guilty of an offense against this Act for which no other penalty is specifically provided, shall be liable, on conviction, for a first offense to a fine not exceeding Five Hundred Dollars, and for a second or subsequent offense to a fine of not less than One Hundred Dollars and not more than One Thousand Dollars.

Section 40. LIABILITY OF CORPORATE OFFICERS, ETC. Every director, manager, secretary or other officer of a corporation or association, and every member of a partnership or syndicate, who knowingly and wilfully authorizes or permits any Act, default, or refusal which would subject the organization to criminal liability hereunder, shall be likewise personally guilty of such offense.

Section 41. PROSECUTIONS. Prosecutions hereunder for imposing of fines shall be at the instance

of the Tax Commissioner and be brought in the name of the Territory.

Section 42. RECOVERY OF UNPAID LIENS. On or after the first day of April of any year, the Tax Commissioner may, with the assistance of the Attorney General, file in the office of the clerk of the district court in the division in which property subject to delinquent taxes is situated, a list of all parcels affected by unpaid liens. Thereafter the Tax Commissioner shall, unless the matter be otherwise resolved, proceed to foreclosure of said liens in substantially the manner prescribed in Sections 22-2-8 to 22-2-18, both inclusive, of Alaska Compiled Laws Annotated 1949, for the foreclosure of land registration liens, and all pertinent provisions of said sections are hereby adopted as applicable hereto.

Section 43. BOARDS OF ASSESSMENT AND EQUALIZATION.

(a) There is hereby created and established for each judicial division a Board of Assessment and Equalization.

(b) Each Board shall consist of three members appointed by the Governor subject to confirmation by the majority of the members of both Houses convened in Joint Session, provided, however, that persons appointed may perform the duties of their offices until action by the ensuing Legislature is taken either confirming or rejecting such appointments.

(1) Board members shall be appointed solely on the grounds of fitness to perform the duties of the office.

(2) In the event of a vacancy on any Board, a successor shall be appointed to serve for the balance of the unexpired term.

(c) The term of each Board member shall be six years, except as hereinafter provided, but any person duly appointed and qualified shall hold office until his successor is appointed and qualified. No Board member shall be eligible to serve more than one six-year term.

(1) The terms of the members first appointed for each Board shall begin when they are appointed and qualified and shall continue for the following periods: one until March 31, 1951, one until March 31, 1953, and one until March 31, 1955.

(2) A Board member may be removed from office by the Governor after notice and opportunity for hearing, upon grounds of inefficiency, neglect of duty, malfeasance in office, but for no other cause whatever.

(d) The principal offices of the respective Boards shall be located in the following cities: for the First Judicial Division at Juneau, for the Second Judicial Division at Nome, for the Third Judicial Division at Anchorage, and for the Fourth Judicial Division at Fairbanks.

(e) The compensation of each Board member shall be $15.00 for each day actually spent in the performance of his duties, including all the time away from his place of residence in connection therewith, together with per diem and travel expense payable in accordance with vouchers issued by the Tax Commissioner.

(f) Each Board, within its judicial division, shall have the power and duty, subject to the approval of the Tax Commissioner as to all expenses of Board operations, to:——

(1) exercise general supervision and direct the activities of assessment and equalization of property taxes;

(2) select an employee or employees or enter into contracts with qualified persons to perform the functions of appraiser and assessor; provided, that persons so appointed shall have the technical and other qualifications prescribed by the Tax Commissioner, and be engaged at rates of compensation prescribed by the Tax Commissioner;

(3) keep an accurate and complete record of all Board business, orders and processes, which records shall be open to public inspection at all reasonable times;

(4) hold hearings and conduct investigations required in the administration of the assessment provisions of this Act and hear and determine appeals involving assessment of property, at such points in their respective divisions as will serve the general convenience of the public, provided that written minutes may be kept of the testimony of witnesses without making a word by word record thereof;

(5) require attendance of witnesses and production of all necessary evidence at any hearings and administer oaths in the course of investigations conducted or hearings held pursuant to the provisions of this Act;

(6) require such searches and appraisements by the assessor as the Board sees fit;

(7) require officers and employees of incorporated cities and districts to furnish such information concerning assessment and equalization of property taxes as is deemed necessary;

(8) perform all duties specifically imposed and exercise all powers conferred upon the Board.

Section 44. TAX COMMISSIONER. The Tax Commissioner shall be the collector of taxes levied under this Act and enforce collections with the aid of such divisional collectors or other deputy collectors and personnel as he may see fit to appoint. He shall administer all provisions of this Act except those specifically assigned to a board or under the purview of municipal or school district authority. The Tax Commissioner shall prescribe and furnish all necessary forms, and promulgate and publish all needful rules and regulations conformable herewith for the assessment and collection of any tax herein imposed, and shall voucher for expenditures according to law.

Section 45. SEVERABILITY CLAUSE. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

Section 46. EMERGENCY CLAUSE. An emergency is hereby declared to exist and this Act shall take effect immediately upon its passage and approval.

Approved, February 21, 1949."